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f/k/a Morrison Homes, Inc.; and Taylor Woodrow
Communities at Vasari, L.L.C.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TAYLOR MORRISON, INC., f/k/a
Taylor Woodrow, Inc., a Delaware
corporation; TAYLOR MORRISON
SERVICES, INC., f/k/a Morrison Homes,
Inc., a Delaware corporation; and
TAYLOR WOODROW COMMUNITIES
AT VASARI, L.L.C., a Florida limited
liability company,

Plaintiffs,

vs.

AMERICAN INTERNATIONAL
SPECIALTY LINES INSURANCE
COMPANY, an Illinois corporation,

Defendant.

Case No. CV09-08651 JHN (PLAx)

Hon. Jacqueline Hong-Ngoc Nguyen

**NOTICE OF FILING OF MOTION
TO TRANSFER TO
MULTIDISTRICT LITIGATION**

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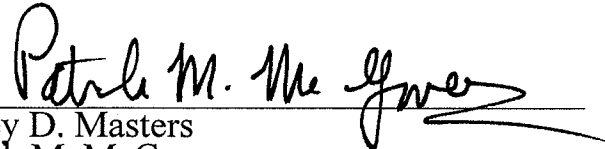
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1 Plaintiffs Taylor Morrison, Inc., Taylor Morrison Services, Inc. and Taylor
2 Woodrow Communities at Vasari, L.L.C. hereby submit, through counsel, this Notice
3 of Filing of Motion to Transfer and Renewed Notice of Related and Potential Tag-
4 Along Action, addressed to the Clerk of the Judicial Panel on Multidistrict Litigation.
5 Copies of said Motion and Memorandum in Support are attached hereto.

6
7 DATED: June 8, 2010

COX, CASTLE & NICHOLSON LLP

8
9 By:


Jeffrey D. Masters
Patrick M. McGovern
Attorneys for Plaintiffs Taylor Morrison,
Inc., Taylor Morrison Services, Inc., and
Taylor Woodrow Communities At Vasari,
L.L.C.

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: CHINESE MANUFACTURED
DRYWALL PRODUCTS LIABILITY
LITIGATION

CASE NO.: MDL Docket No. 2047

THIS DOCUMENT RELATES TO THE
FOLLOWING CASES:
09-4114, 09-4117, and 09-4294

**MOTION TO TRANSFER AND RENEWED NOTICE
OF RELATED AND POTENTIAL TAG-ALONG ACTION**

**TO THE CLERK OF THE PANEL, ALL PARTIES AND THEIR ATTORNEYS
OF RECORD**

Pursuant to Rule 7.5(e) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (the "Panel"), Taylor Morrison, Inc., f/k/a Taylor Woodrow, Inc., Taylor Morrison Services, Inc., f/k/a Morrison Homes, Inc., and Taylor Woodrow Communities at Vasari, L.L.C. (collectively, "Taylor"), defendants in this multidistrict litigation in the United States District Court for the Eastern District of Louisiana, hereby moves to transfer and gives notice of the following related and potential tag-along action:

Tag-Along/Related Action: *Taylor Morrison, Inc., Taylor Morrison Services, Inc., and Taylor Woodrow Communities at Vasari, L.L.C. v. American International Specialty Lines Insurance Company*

Court: United States District Court, Central District of California

Case No.: 2:09-CV-8651 JHN (PLAx)

Judge: Hon. Jacqueline Hong-Nguyen, Courtroom 1600

Basis for Notice and Motion to Transfer

1. On or about June 15, 2009, this Panel determined that coordinated or consolidated pretrial proceedings were appropriate in ten (10) lawsuits which shared “factual questions concerning drywall manufactured in China, imported to and distributed in the United States, and used in the construction of houses; plaintiffs in all actions allege that the drywall emits smelly, corrosive gases.” *In Re: Chinese-Manufactured Drywall Prod. Liab. Litig.*, 626 F. Supp. 2d 1346 (June 15, 2009).

2. Pursuant to that ruling, such proceedings were consolidated in the United States District Court for the Eastern District of Louisiana (“E.D. La.”), the Honorable Eldon E. Fallon presiding (“MDL No. 2047”).

3. Since that ruling, numerous actions have been transferred to the transferee Court, including actions seeking declaratory judgment on the issue of insurance coverage.

4. Judge Fallon has undertaken to provide a forum for the pre-trial litigation, discovery, and possible resolution of all aspects of the cases resulting from the effects of Chinese drywall, including insurance coverage. *See In Re: Chinese-Manufactured Drywall Products Liability Litigation*, Minute Entry of Judge Fallon dated September 24, 2009 and attached hereto as exhibit B at XIV, stating:

There are a number of issues involving insurance matters that will be addressed in this litigation. These include actions against insurers of manufacturers, exporters, importers, brokers, distributors, builders, drywall contractors/installers and homeowners.

5. Likewise, every Joint Report issued in connection with MDL No. 2047 has recognized the following:

INSURANCE ISSUES

There are a number of issues involving insurance matters that will be addressed in this litigation. These include actions against insurers of ... builders

6. Since the inception of *In Re: Chinese-Manufactured Drywall Products Liability Litigation*, MDL No. 2047, in the Eastern District of Louisiana, several actions have been filed there naming insurance carriers and placing at issue similar or identical insurance policy provisions as those at issue in the instant case. See e.g., *Borne v. Liberty Mut. Fire Ins. Co.* (E.D. La.; CA No. 09-6073); *Van Winkle v. Nautilus Ins. Group* (E.D. La.; CA No. 09-4378); *West v. State Farm Fire & Cas. Co.* (E.D. La.; CA No. 09-6356); *Pate v. Am. Int'l Specialty Lines Ins. Co., et al.* (E.D. La., Case No. 09-07791). In addition, at least one insurance coverage declaratory judgment action – *Owners Insurance Co., et al. v. The Mitchell Co., Inc., et al.*, M.D. Ga., Case No. 5:09-374 – has been consolidated with MDL No. 2047.

7. In the instant related action pending in the Central District of California, Taylor seeks insurance coverage for the Chinese drywall claims asserted against it in the multidistrict litigation in the Eastern District of Louisiana and for the losses, costs and expenses arising out of the importation and use of Chinese drywall in homes constructed by Taylor subcontractors.

8. The action that is the subject of this Motion to Transfer and Tag-Along Notice involves a request for a declaration of the parties' rights under four (4) insurance policies containing language similar or identical to the insurance policies at issue in the actions referred to in paragraph 6, above. At issue are damages incurred as a result of property damage occasioned in homes containing Chinese-manufactured drywall whose owners have complained that such drywall emitted smelly, corrosive gases.

9. Counsel for Taylor, Neal A. Sivyver and Stephen E. Walker, are members of MDL No. 2047's Homebuilders' Steering Committee and Defendants' Steering Committee,

respectively, and are actively involved in presently litigating before Judge Fallon, in MDL No. 2047, the same issues raised in the instant case.

10. For the foregoing reasons, and for the reasons stated in the accompanying Memorandum in Support of Motion to Transfer and Renewed Notice of Related and Potential Tag-Along Actions, the interests of all affected parties would be advanced by prompt transfer of the action that is the subject of this Tag-Along Notice and Motion to Transfer to MDL No. 2047.

Dated: June 8, 2010.

Respectfully submitted,

/s/ Stephen E. Walker

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CERTIFICATE OF SERVICE

Judicial Panel Multidistrict Litigation

I hereby certify that a true and correct copy of the foregoing was furnished by regular U.S. Mail on this 8th day of June, 2010 to those individuals listed on the attached Judicial Panel Service List and the following:

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/s/ Stephen E. Walker

**Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation**

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more than one attorney. See Panel rule 5.2(c).

Party Representation Key

- * Signifies that an appearance was made on behalf of the party by the representing attorney.
- # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
- All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2047 - Chinese-Manufactured Drywall PL
For Open Cases

Judicial Panel on Multidistrict Litigation - Panel Service List

Page 1

Docket: 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation

Status: Transferred on 06/15/2009

Transferee District: LAE Judge: Fallon, Eldon E.

Printed on 02/17/2010

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: CHINESE MANUFACTURED
DRYWALL PRODUCTS LIABILITY
LITIGATION

CASE NO.: MDL Docket No. 2047

THIS DOCUMENT RELATES TO THE
FOLLOWING CASES:
09-4114, 09-4117, and 09-4294

**MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER
AND RENEWED NOTICE OF RELATED AND
POTENTIAL TAG-ALONG ACTION PURSUANT TO J.P.M.L. 7.5(e)**

Taylor Morrison, Inc., f/k/a Taylor Woodrow, Inc., Taylor Morrison Services, Inc., f/k/a Morrison Homes, Inc., and Taylor Woodrow Communities at Vasari, L.L.C. (collectively, “Taylor”), file this memorandum in support of the Motion to Transfer and Renewed Notice of Related and Potential Tag-Along Actions filed pursuant to Rule 7.5(e) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation by Taylor, defendants in this multidistrict litigation in the United States District Court for the Eastern District of Louisiana.

Taylor respectfully requests that, pursuant to J.P.M.L. Rule 7.4, the Judicial Panel issue a Conditional Transfer Order to MDL Case No. 2047 (the “MDL Action”), for the action identified in the Motion to Transfer and Renewed Notice of Related and Potential Tag-Along Action, namely, *Taylor Morrison, Inc., Taylor Morrison Services, Inc., and Taylor Woodrow Communities at Vasari, L.L.C. v. American International Specialty Lines Insurance Company,*

United States District Court, Central District of California, Case No.: 2:09-CV-8651 JHN (PLAx), for the reasons set forth herein.

The Chinese Drywall Claims Against Taylor

1. The owners of certain homes developed and built by Taylor have made claims against Taylor, alleging that the Chinese drywall installed in the homes that they purchased from Taylor is defective and has resulted in bodily injury and property damage to their homes and personal property (the “Chinese Drywall Claims”).

2. These Chinese Drywall Claims include lawsuits filed in the United States District Courts for the Southern and Middle Districts of Florida (the “Florida Lawsuits”).

Consolidation of the Florida Lawsuits in the MDL Litigation

3. On June 15, 2009, this Panel ordered that the Florida Lawsuits against Taylor be transferred to the Eastern District of Louisiana and that they be assigned to the Honorable Eldon E. Fallon for coordinated or consolidated pretrial proceedings with other actions involving Chinese Drywall claims. 626 F.Supp.2d 1346 (U.S. Jud. Pan. Mult. Lit. 2009).

Taylor’s Insurance Coverage Action

4. Taylor is an insured under certain commercial umbrella liability insurance policies issued by American International Specialty Lines Insurance Company (“AISLIC”), for policy periods ranging from at least March 1, 2005 to March 1, 2009.

5. Taylor tendered the Chinese Drywall Claims to AISLIC for indemnity, but AISLIC failed to acknowledge its coverage obligations.

6. Taylor filed its insurance coverage action against AISLIC on August 31, 2009 in the Superior Court of the State of California, County of Los Angeles, Case No. BC420870, seeking a declaration that AISLIC is obligated to indemnify it for the Chinese Drywall Claims (the “California State Court Action”).

7. On November 24, 2009, AISLIC removed the California State Court Action to the United States District Court, Central District of California, pursuant to 28 U.S.C. §§ 1441(b) (the “California Federal Court Action”).

8. Since then, the California Federal Court Action was ordered to be transferred to the United States District Court, Middle District of Florida. However, so far as Taylor is aware, the California Federal Court Action has not yet been physically transferred or designated a case number in the Middle District of Florida.

9. AISLIC has filed an Answer and Affirmative Defenses in response to the California Federal Court Action denying any obligation to Taylor for the Chinese Drywall Claims.

10. The affirmative defenses asserted by AISLIC in the California Federal Court Action are similar to the defenses raised by other insurers in Chinese drywall cases currently pending before Judge Fallon in the Eastern District of Louisiana and in other United States District Courts, and include, *inter alia*:

a. That there is no coverage under the subject policies for the Chinese Drywall Claims to the extent that parties other than the Taylor entities are liable for the damages alleged;

b. That the subject policies do not cover damages of the type sought in the Chinese Drywall Claims;

c. That there is no coverage for losses relating to the repair or replacement of defective Chinese drywall;

d. That there is no coverage under the subject policies if the alleged bodily injury or property damage first commenced before the inception of any particular policy;

e. That there is no coverage if the alleged bodily injury or property damage arose from the release or escape of “pollutants;” and

f. That there is no coverage due to any number of exclusions found in a standard commercial umbrella liability insurance policy.

Common Questions of Fact

11. There are multiple common questions of fact in the California Federal Court Action and the MDL Action. These include:

a. The manner in which Chinese drywall was manufactured, imported, distributed, and installed, as such relate to the standard pollution exclusion;

b. Whether Chinese drywall is a potential cause of bodily injury or property damage;

c. If Chinese drywall is a potential cause of bodily injury or property damage, the process by which it causes injury or damage;

d. If Chinese drywall is a potential cause of bodily injury or property damage, the time period during which such bodily injury or property damage occurred;

e. The relationship (if any) between Chinese drywall and the bodily injury and property damage allegedly suffered by plaintiffs who purchased homes from Taylor;

f. The nature of the bodily injury and property damage allegedly suffered by the plaintiffs who purchased homes from Taylor, including the dates and duration of the injury and damage;

g. The items and amounts of monetary damages incurred by these plaintiffs; and

h. Taylor's liability (if any) for Chinese Drywall Claims to the plaintiffs who purchased homes from them, and the liability of other parties for those claims (mixed question of fact and law).

Common Questions of Law

12. The common questions of law in the California Federal Court Action and the MDL Action include the theories upon which liability of Taylor in the MDL Action are based (Negligence, Negligence Per Se, Strict Liability, Breach of Warranty, Breach of Contract, Nuisance, etc.), and the theories of law upon which the potential liability of other parties for the Chinese Drywall Claims against Taylor are based.

13. Questions of insurance coverage law in the California Federal Court Action pertaining to insurance coverage obligations owed to Taylor are now common to the MDL Action and direct actions filed against insurers that are now pending before the MDL Court.

Just, Efficient, and Consistent Resolution of Claims

14. Taylor is currently a named defendant in cases pending in MDL No. 2047, In Re: Chinese-Manufactured Drywall Products Liability Litigation, before the Honorable Eldon E. Fallon in the Eastern District of Louisiana. Judge Fallon and the attorneys representing Taylor are well-versed in the facts and issues surrounding all aspects of the Chinese drywall cases. Allowing Judge Fallon to preside over the pre-trial litigation of the instant action and similar cases would provide for the best opportunity for a just, efficient, and consistent resolution of all aspects of the cases stemming from the effects of Chinese drywall.

15. Likewise, AISLIC is a named defendant in at least one similar direct action pending before the Honorable Eldon E. Fallon in the Eastern District of Louisiana, involving similar, if not identical, issues of law and fact – namely, *Pate v. AISLIC, et al.*, (E.D. La., Case No. 09-07791).

16. AISLIC and its successor, Chartis Specialty Insurance Company, are both named as defendants in another direct action filed by the Plaintiffs' Steering Committee before the Honorable Eldon E. Fallon in the Eastern District of Louisiana, involving similar issues of law and fact – namely, Omnibus Complaint (V), *Dean and Dawn Amato, et al. v. AISLIC, et al.*, (E.D. La., Case No. 10-932).

17. Judge Fallon has recently expressed interest in receiving claims regarding insurance coverage. *See In re Chinese-Manufactured Drywall Products Liability Litigation*, MDL No. 2047, January 14, 2010 Status Conference Hearing Transcript at 15 (E.D. La. Jan. 14, 2010), where Judge Fallon stated:

There's also some matter that I mentioned the last time with the insurance companies, the issue of whether or not they should be transferred to the MDL and consolidated with this case or whether they should go forward with separate, independent jurisdictions.

I studied the matter a little more closely, and I find that a lot of the policy defenses that are being argued really have to do with the type of issues that I'll be dealing with the MDL; that is to say, a defense might be contesting contamination or contesting the type of materials that was being used and whether or not that is accepted or excluded by the policy.

Rather than have discovery in the various districts of the country on the same issues-the whole purpose of the MDL is to prevent that-those insurance issues, since they deal with the same facts that I'll be dealing with in the MDL, it looks like that those cases are better and more efficiently dealt with if they are transferred to the MDL. Hopefully, that will be done.

18. Additionally, Plaintiffs' Liaison Counsel and Plaintiffs' Lead Counsel in the MDL Action have submitted to this Panel a motion and memorandum of law requesting transfer and consolidation of this and other similar matters to the MDL Action.

19. A transfer of the California Federal Court Action to the MDL Action in Louisiana will undoubtedly enhance the just and efficient conduct of all Chinese drywall cases, including the instant case, and promote the resolution of issues created by the effects of Chinese drywall.

20. A transfer will avoid the duplication of discovery on the common issues of fact described above. For example, absent a transfer, the plaintiff homeowners will likely be deposed in both cases. There will also be significant efficiencies and savings through the use of a single document depository and method for the transfer of information. A transfer will also avoid inconsistent discovery and other pre-trial rulings.

21. However, the most significant benefit of a transfer is likely to be that it will facilitate the settlement of both the plaintiff homeowners' claims against Taylor and Taylor's claims against AISLIC. It may not be possible to settle the homeowners' claims without insurance company participation, but given such participation, Taylor's claims against its carriers will almost certainly be resolved at the same time.

Conclusion

Taylor respectfully requests that the Panel conditionally transfer the action referenced in the Motion to Transfer and Renewed Notice of Related and Potential Tag-Along Case and in the attached schedule, to the MDL Action, now pending in the Eastern District of Louisiana, before the Honorable Eldon E. Fallon.

Dated: June 8, 2010.

Respectfully submitted,

/s/ Stephen E. Walker

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Judicial Panel Multidistrict Litigation

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**Judicial Panel on Multidistrict Litigation - Panel Service List
for
MDL 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation**

***** Report Key and Title Page *****

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more than one attorney. See Panel rule 5.2(c).

Party Representation Key

- * Signifies that an appearance was made on behalf of the party by the representing attorney.
 - # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
- All counsel and parties no longer active in this litigation have been suppressed.

This Report is Based on the Following Data Filters

Docket: 2047 - Chinese-Manufactured Drywall PL
For Open Cases

Judicial Panel on Multidistrict Litigation - Panel Service List

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Docket: 2047 - IN RE: Chinese-Manufactured Drywall Products Liability Litigation

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